

The Society and College of Radiographers  
The Filmless Department: use of images as evidence in legal proceedings

In response to several questions from Clinical Imaging Departments and with the increase in the use of Picture Archive and Communication Systems (PACS) the Society and College of Radiographers issues this advice and guidance for Clinical Imaging Departments on the use of images as evidence in legal proceedings.

In law, there is an important principle of "continuity of evidence"<sup>1</sup>. This means that the lawyer bringing the case will need to show that the image is directly linked to the individual who in turn is linked to the scene of the crime or incident (for example, in the case of negligence). The Society and College of Radiographers is not aware of any incident of clinical images being challenged in this way, however the lawyer bringing the case will want to ensure that there is an unbroken chain of paperwork linking all "exhibits" to the crime scene or incident. If there is any possibility of tampering, it could lead to the particular exhibit (in this case the image, and thus any report based upon it) to be called into question and thus discredited.

If the examination is known to be or is likely to be the subject of legal action - and this would include any Non-Accidental Injury (NAI) case, forensic post-mortem examination, other forensic examination (e.g. narcotics trafficking) or, for example, examinations on injuries sustained in a terrorist attack which will be the subject of a criminal injuries compensation claim, the best practice would be for either:

1. A hard copy image to be printed at the time (with date, time and subject number) and initialed by the radiographer & witness, and a written record/statement of the examination, time and chain of evidence made by the radiographer and witness.

**OR**

2. A "soft copy" record of the examination recorded on CD at the time and then placed in a sealed bag, initialed by the radiographer & witness with the same record/statement of the examination as above.

In both cases, the images or CDs should be stored in a secure store. In either case, the image produced at the time (soft or hard) would be considered to be the primary evidence and could reasonably be expected to be accepted without issue in the courts provided that it could be shown that the image could not have been tampered with.

If (as is often the case in, for example, assault cases arising in Accident & Emergency Department) it is not known at the time that the examination is likely to be the subject of legal action the situation is less clear. In such a case, it is likely to be several months before a request is made for the image to be produced for a hearing. In theory, it would be possible for an image to have been manipulated during the intervening period (this is not that different from the possibility of a film being tampered with or substituted with another image). The hospital will thus need to demonstrate that a robust and secure method of image storage, transmission and control of access to images is in place, and normal procedures that exist for medical confidentiality should be sufficient. However, the Trust Board (or equivalent) would be wise to take legal advice on this if it was an issue.

It can be argued that digital images are more secure, as any change to image data is / or can be recorded so that any evidence of tampering can be detected. If the image is subject to challenge, it may be possible to show that it has not been tampered with by interrogation of the image file and Service Managers should approach their PACS / Equipment supplier and ask them this point specifically.

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<sup>1</sup> Continuity of Evidence: the movement and location of real evidence from the time it is obtained to the time it is presented in court. It is the documentation and testimony that proves that the evidence has not been altered or tampered with in any way since it was obtained.

The Society and College of Radiographers is grateful to Mark Viner, Chair of the Association of Forensic Radiographers for his help in writing this advice and guidance document. Any questions or comments should be directed to Christina Freeman who is the officer responsible.

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